

Appl. No. 10/627,533
Docket No. 9332
Amdt. dated February 16, 2007
Reply to Office Action mailed on January 16, 1007
Customer No. 27752

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REMARKS

Claim Status

Claims 1-10 are currently pending.

Claims 11-22 have been withdrawn without prejudice as being directed toward a non-elected invention.

Response to Restriction Requirement

I. Election of Inventions

The Examiner has required, under 35 USC §121, election of an invention corresponding to Claims 1-10 (Group I) and Claims 11-24 (Group II). Applicants provisionally elect Group I. Claims directed toward Group II have been withdrawn. This election is made with traverse.

The Office Action states that examination of both Groups I and II would be a serious burden on the Examiner. Applicants respectfully point out that the claims of Group II are directed toward methods of use of the compositions of Group I, and thus are related to Group I. Examination of all claims in both Group I and Group II would require little or no additional searching. Applicants respectfully request that this restriction requirement be withdrawn.

II. Election of Species

The Office Action has required election of a single disclosed species for each of the following groups:

- 1) an N-acyl amino acid compound
- 2) a skin active agent
- 3) an additional component
- 4) an emulsion
- 5) a condition to be treated

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Applicants respectfully traverse, and submit that these requirements of an election of a single species are improper. Under MPEP §806.01, a provisional election of a single species may be required where only generic claims are presented and the generic claims recite such a multiplicity of species that an unduly extensive and burdensome search is necessary. Applicants respectfully assert that there is no undue burden placed on the Office in examining all original claims. However, to require election in each of the above categories would require Applicants to file as many as 30 divisional applications, which would place an unfair burden on Applicants.

Applicants point out that the above are not patentably distinct species, but are distinct elements of a single, patentable claim. N-acyl amino acid compounds are well-defined and easily searchable, as is the class of skin care actives and also emulsions. The Office Action states that "different amino acids have different and divergent structures." Applicants point out, however, that amino acids have a common structural backbone and with varying side chains. Furthermore, the structure must diverge to some extent; otherwise, only one amino acid would exist. Amino acids are a well-defined class and are limited in number. In addition, Applicants claims are specifically directed toward the N-acyl subclass of amino acids, which makes searching the prior art even less onerous.

Furthermore, to require election of a species within these classes would require Applicants to unduly and prematurely narrow the scope of the claimed invention, in some cases, to a single chemical compound. Applicants assert that this is inconsistent with the rules surrounding restriction requirements as set forth in the MPEP. Furthermore, Applicants are being asked to significantly narrow claims before any art is identified that would require additional limitations.

To be in compliance with the requirements of the Office Action, Applicants elect provisionally and with traverse the following species:

- 1) For an N-acyl amino acid Applicants elect N-acyl phenylalanine of claim 3;
- 2) For a skin active agent, Applicants elect vitamin B3 of claim 5;
- 3) For an additional component, Applicants elect a conditioning agent of claim 8;
- 4) For an emulsion, Applicants elect an oil-in-water emulsion of claim 10;
- 5) For a condition to be treated, Applicants elect uneven skin tone of withdrawn claim 12.

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Applicants reserve the right to pursue the non-elected species in one or more divisional applications.

Conclusion

The foregoing represents an earnest attempt at an provisional election of species. Reconsideration and withdrawal of all restriction requirements is respectfully requested prior to issuance of the next Office Action.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By 
Signature

Date: February 16, 2007
Customer No. 27752

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